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Congress of the United States
House of Representatives
Committee on Appropriations
Washington, D.C. 20515

June 30, 1970

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Honorable David N. Henderson, Chairman
Subcommittee on Manpower and Civil Service
Committee on Post Office and Civil Service
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

It has come to my attention that S. 782, a bill to protect the civilian employees of the Executive Branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasion of their privacy, was passed by the Senate on 19 May 1970 and is now being considered by your Subcommittee. I am concerned over the possible adverse impact of this legislation on the effectiveness with which sensitive agencies of the Government, such as the Central Intelligence Agency, carry out their important missions.

As you know, the administration of the Central Intelligence Agency is governed by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949. This legislation imposes on the Director of Central Intelligence responsibility "... for protecting intelligence sources and methods from unauthorized disclosure ..." and provides that "In the interests of the security of the foreign intelligence activities of the United States ... the Agency shall be exempted from the provisions ... of any ... law which require(s) the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency ...".

It would appear that certain provisions of S. 782 would

directly conflict with the above-mentioned statutory responsibilities of the Director for protecting sources and methods and other data relating to the Agency, and therefor be detrimental to our national security.

The bill would, as I understand it:

a. Require substantial change in the Agency's established policy for ensuring the loyalty and suitability of its personnel.

b. Grant any employee the right to insist upon counsel or outside representation whenever questioned on any matter which might conceivably lead to disciplinary action.

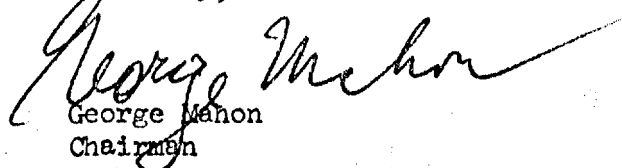
c. Enable any employee or applicant, or employee organization acting in behalf of an employee or applicant, to bring civil suit in Federal court against any official allegedly guilty of violating or threatening to violate the law.

I am convinced that the present security and personnel procedures of the CIA are necessary for it to succeed in its vital mission. Any intelligence activity which becomes known to our opponents is seriously downgraded. It is difficult, in a free and open society such as ours, to maintain the degree of secrecy necessary to such operations, but our national security demands that we continue to be well informed on the operations and the technology of our opponents.

I am also convinced that the Agency fully realizes that security and personnel procedures must be carried out with utmost regard for the personal dignity and privacy of its employees, if it is to receive in return the high level of personal discipline it demands of its employees. I therefore am strongly of the opinion that the Agency should be completely exempted from the provisions of S. 782.

I would appreciate it if you would make my views known to the Members of your Subcommittee when this legislation is under consideration.

Sincerely,


George Mahon
Chairman

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For example it would prohibit the Agency from:

- a. Taking notice of attendance of employees at any assembly, discussion, or lecture presumably including those under communist or subversive sponsorship.
- b. Requiring an employee to report on outside activities.
- c. Requiring an employee to submit to interrogation or examination concerning personal relationships with relatives, religious beliefs, sexual attitudes except on a personal finding by the Director or designee in individual cases.
- d. Employing the polygraph to elicit above type of information except on a personal finding by the Director or designee.
- e. Requesting an employee to disclose info on property, income, assets and liabilities except in potential cases of conflict of interest or where inquiry is specifically authorized by the Director or designee.
- f. Requiring an employee faced with possible disciplinary action to submit to interrogation without counsel or a representative of his choice.
- g. Discharging, disciplining, demoting, denying promotion, reassigning or otherwise discriminating against an employee because of his refusal to comply with a requirement, request or action made unlawful by this act.

The bill permits an employee or applicant alleging violation or threatened violation by an official of the Executive Branch to bring civil action in district court. It also establishes an independent board where such cases may be adjudicated. Either of these remedies offer far reaching opportunities for harassment by subversive groups and disruption of discipline.

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The purposes clause of the National Security Act of 1947 (P. L. 80-253) states that: "In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States;...".

The Act then goes on to establish the Central Intelligence Agency and the position of the Director of Central Intelligence and in Section 102(c)(3) specifically charges the DCI with responsibility "...for protecting intelligence sources and methods from unauthorized disclosure...".

The CIA Act of 1949 (P. L. 81-110) grants the DCI authority to protect such sources and methods by exempting the Agency "...from the provisions... of any... law which require[s] the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency...".

S. 782 raises a serious question of statutory interpretation concerning possible conflict between S. 782 and the authorities and responsibilities now reposed in the Director by the provisions of law referred to above.

S. 782 specifically authorizes adversary procedures which pose a serious dilemma - the Agency must either remain silent in the face of unfounded allegations (with the alleged offending officer taking the consequences of the sanctions embodied in the bill), or it must divulge information which it is obligated by statute to protect, and disclosure of which might damage the national intelligence effort.

A detailed analysis and explanation of the adverse impact of the bill on the fundamental security interests of the Agency is attached. In sum they make clear that enactment of the bill without a full exemption for CIA and other members of the intelligence community such as NSA would be a most serious obstacle to the effective protection of intelligence sources and methods. Without a complete exemption, S. 782 would seriously weaken the Agency's efforts to prevent penetration by a hostile intelligence service, to ensure that its employees are suitable in all respects for employment in this sensitive Agency, and in general make it much more difficult for the Director of Central Intelligence to discharge his responsibilities under existing law.

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CIA - Personnel Security and Suitability

1. The Agency has special responsibility to ensure the loyalty, security consciousness, integrity and psychological stability of its employees:

a. Soviet and other hostile services assign overriding priority to penetrating U.S. intelligence organs by identifying and exploiting personal vulnerabilities and weaknesses of our personnel.

b. Such penetration can enable the enemy to identify and neutralize our own intelligence operations; learn what we know, and don't know, about enemy capabilities and intentions; gain insights enabling the enemy to confuse and deceive us; and provide vital information about U.S. national policy, military capabilities, technology, etc., with which Agency personnel often become familiar in the course of their routine work.

c. Intelligence personnel are not only an attractive target for the enemy, but in many respects a particularly accessible one. Unlike members of most Government organizations, intelligence personnel often must carry out their demanding and sometimes dangerous assignments completely alone and in hostile areas. They are thus subject to severe psychological pressures. They are far removed from immediate supervision, or even observation by friendly colleagues. In these circumstances any latent vulnerabilities and instabilities in their character or loyalty may come to the surface and be detected and exploited by an ever-alert enemy.

d. The only protection against these hazards is a careful and thorough assessment of the individual to ensure the selection of the right man for the job.

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e. This is essential not only in the interest of the Agency and the Government, but in that of the individual as well. Many people, through no fault of their own, are subject to latent weaknesses and vulnerabilities of one sort or another, and we believe it would be a great disservice to them to impose upon them burdens for which they are unfitted, perhaps leading to unfortunate consequences for them as well as for the Agency.

2. Hence we have over the years, with the best professional advice available, devised a system of medical and psychological tests and security checks designed to identify potential problems in these fields before they can cause serious damage. In a sense these tests may be compared with the thorough assessments employed in the selection of jet pilots and astronauts-- too much is at stake to take chances with avoidable human error or weakness.

3. In the past there have been all too many cases where sensitive agencies of both the U.S. and other free world governments have suffered massive damage precisely because latent human weaknesses of individuals in key positions were detected and exploited by our enemies: several cases a few years back seriously disrupted the effectiveness of NSA; the British Intelligence Service has still not recovered from the effects of the Philby, Blake and other cases; the Germans, French and Swedes, among others, have had similar experiences; and just last year an intensive investigation was taking place in Brussels to determine the damage to NATO security resulting from an espionage case there.

4. In sum, CIA's procedures for ensuring the security and suitability of its personnel have been developed over the years on the basis of the Agency's specialized knowledge of the aims and methods of the opposition, the importance and sensitivity of the Agency's responsibilities, the best available professional advice, and the cumulative practical experience of over two decades of Agency management. These procedures have, with only the rarest exceptions, had the full understanding and support of Agency personnel. Any major changes in these procedures should be adopted only after a most careful examination of the possible consequences.

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Section-By-Section Analysis of Certain Provisions of S. 782

Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the Executive Branch, or by any outside parties or organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter or subject other than the performance of official duties.

The purpose of this section is to protect employees from compulsion to attend meetings, discussions, and lectures on political, social, and economic subjects unrelated to his duties.

The language is so broad that it can be interpreted to prohibit a department or agency from taking notice of the attendance of an employee at meetings of subversive organizations or meetings designed to undermine the Government of the United States. Many departments and agencies, and particularly those dealing with security matters, would find such a prohibition intolerable.

Section 1 (d). Makes it unlawful to require an employee to make any report of his activities or undertakings not related to the performance of official duties unless there is reason to believe that the employee is engaged in outside activities or employment in conflict with his official duties.

The purpose of this section is to guarantee the freedom of an employee to participate in any endeavor or activity in his private life as a citizen, free of compulsion to report to supervisors his action or inaction, his involvement or his noninvolvement. It is to assure that he is free of intimidation or inhibition as a result of the employment.

This section is of primary importance to those agencies concerned with security matters which could be seriously compromised by employee activities and relationships not directly connected with his employment. Security agencies must request their employees to report contacts with foreign officials not only to give the employer notice of the relationship but also to protect the employee in his personal security should the foreign official be a member of an intelligence service. Similarly, the security agencies must request employees to submit publications and speeches for clearance in advance to insure that there is no inadvertent disclosure of intelligence information.

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Section 1 (e). Makes it unlawful to require or request any applicant or employee to submit to any interrogation or examination designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters. The section also prohibits the use of psychological testing to inquire into these same areas. These questions may be asked only on the determination by a physician that they are necessary to enable him to determine whether or not an employee is suffering from mental illness. An employee may be informed of a specific charge of sexual misconduct and afforded an opportunity to refute the charge.

A partial exemption from this subsection is provided for CIA and the NSA in section 6. These agencies may use psychological testing in the proscribed areas on the basis of a personal finding by the Directors or their designees in each individual case that the information is necessary to protect the national security.

Psychological testing in these areas is part of the total screening process which has been established to weed out applicants with undesirable traits. It is of primary concern to security agencies. The exemption provided by section 6 affords some relief, but it will still be necessary to make personal findings in each individual case. This implies that psychological screening is an exception rather than the necessary procedure in every case.

Section 1 (f). Prohibits the use of a polygraph test designed to elicit from an applicant or employee information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices or concerning his attitude or conduct with respect to sexual matters.

The purpose is not to prohibit the use of the polygraph but to prohibit its use to elicit information considered to be of a personal nature.

A partial exemption from this subsection is provided for CIA and NSA in section 6. The polygraph may be used in the proscribed areas on the basis of a personal finding by the Directors or their designees in each individual case that the test is necessary to protect the national security. As with the psychological testing, polygraph testing is of primary concern to the security agencies who have found it to be not only an invaluable supplement to field investigations but uniquely effective in detecting certain types of security vulnerabilities. It is particularly useful in uncovering undesirable characteristics which do

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not appear in field investigations. The requirement for individual findings in each case to obtain relief from this subsection implies that polygraph screening is an exception rather than a necessary procedure.

Section 1 (i). Makes it illegal to request any employee to disclose any items of his property, income, or other assets, sources of income, or liabilities. The first proviso excepts those employees who have authority to make final determination with respect to claims which require expenditure of monies of the United States. The second proviso excepts reports as may be necessary or appropriate for the determination of liabilities for taxes, tariffs, custom duties, or other obligations imposed by law.

A partial exemption for the NSA and the CIA has been granted in section 6. Financial disclosure may be requested of an employee or applicant on the basis of a personal finding by the Directors or their designees in each individual case that the information is necessary to protect the national security. The broad language used could prohibit requesting certain information from employees for such things as credit union loans, health insurance reimbursements, and other programs designed for the welfare of the employee, which are not directly related to national security and thus not covered by the partial exemption granted CIA and NSA.

Section 1 (j). Makes it illegal to request financial disclosure from those employees excepted under the first proviso of subsection (i) other than specific items tending to indicate a conflict of interest.

Full financial disclosure assists both the employee and the Government in making what at best is a difficult decision as to conflict of interest. In the absence of full disclosure, it appears that this burden is placed entirely upon the employee.

Section 1 (k). Makes it illegal to require an employee who is under investigation for misconduct to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice if he so requests. In the case of NSA and CIA, counsel must be either another employee of, or approved by, the agency involved.

This right inures to the employee at the inception of the investigation and does not require that the employee be accused formally of any wrongdoing before he may request presence of counsel or friend.

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This section is understood to be of concern to all departments and agencies and could lead to a serious deterioration of employee discipline. If a supervisor asks an employee for an explanation of consistent tardiness the employee is entitled to counsel at this stage. The section is of even more concern to the security agencies which may find it necessary to interrogate an employee regarding activities related to security matters.

Section 1 (1). Makes it illegal to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise discriminate against an employee by reason of his refusal or failure to submit or comply with any requirement made unlawful by this act.

The purpose of this section is to prohibit discrimination against any employee because he refuses to comply with an illegal order as defined by this act or takes advantage of a legal right embodied in the act.

This section, combined with section 4, could seriously undermine the authority of any executive agency to conduct its business. For example, any employee being transferred to a post to which he objects could block the transfer with a suit alleging a violation of this act until such time as the case is brought to trial and it is proven that the transfer is for the benefit of the Government and is not a disciplinary action.

Section 4. Permits any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the act to bring a civil action in the district courts.

The potential of this section when combined with section 1 (1) is most serious. With the written consent of any person affected or aggrieved by a violation or threatened violation, any employee organization may bring action on behalf of such person, or may intervene in such action. This would appear to establish a basis for jurisdictional conflicts between competing unions. Further, this section and section 5 establish two new forums for an employee who is terminated for cause to contest the termination on the issue of a violation of this act.

Since the court action authorized by the bill is against the offending supervisor rather than the department or agency, the practical result is litigation between one employee and another. This in turn could expose supervisors to continued harassment by disgruntled employees with the result of a serious breakdown in discipline and reluctance of qualified employees to accept supervisory responsibility.

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With respect to applicants, this section has most serious implications. All departments and agencies would be subject to harassment by any applicant who is not hired for the position he feels qualified to fill. For example, subversives acting on their own or on instruction from foreign agents could file suits for the sole purpose of harassment based on allegations of improper questioning during recruitment interviews.

Section 5. Establishes an independent Board on Employees' Rights to provide applicants or employees with an alternative means of obtaining administrative relief from violations of the act short of recourse of the judicial system. It creates the same potential for harassment as section 4. If the charged employee loses his case before the Board, he can still take it to the courts.

Section 6. Permits the CIA and the NSA to request employees or applicants to take a polygraph test or psychological testing designed to elicit information concerning his personal relationship to any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement if the Directors, or their designees, make a personal finding with regard to each individual case that the test or information is required to protect the national security. In view of previous comments in connection with subsection 1(e) (psychological testing) and with subsection 1(f) (polygraph) this section implies that these screening aids will be used as an exception rather than the necessary procedure in every case.

Section 7. Requires an employee of CIA or NSA to give his employing agency 120 days to prevent threatened violation of the act, or redress an actual violation of the act, before proceeding before either the United States district court or the Board on Employees' Rights. This requirement for notice does not apply to CIA or NSA applicants who, along with all other Executive Branch employees and applicants, have a right to bring an action before the Board or the district court and disregard existing administrative remedies or grievance procedures.

The section reaffirms the existing statutory authority of the Director of Central Intelligence and the Director of the National Security Agency to terminate the employment of any employee. However, the potential for statutory conflict still exists should the Director terminate an employee for cause under existing statutory authority and a district court order reinstatement on a finding of a violation of the act.

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Section 8. Recognizes the statutory authority of the Director of Central Intelligence and the Director of the National Security Agency to protect or withhold certain information from unauthorized disclosure. However, information which the Director determines must be protected and not disclosed may actually provide the only basis for refuting unfounded allegations. Since the sanctions embodied in the bill run against the alleged offending employee not the Director making the determination, the net effect of withholding information to protect vital national interests is to make the charged employee bear the consequences, which can include loss of pay and even termination of employment. On the other hand, disclosure of such information with its consequential damage to the national intelligence effort is even less acceptable.

Section. 9. Grants the FBI a complete exemption from the act.

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91ST CONGRESS
2D SESSION

S. 782

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 1970

Referred to the Committee on Post Office and Civil Service

AN ACT

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. It shall be unlawful for any officer of any
4 executive department or any executive agency of the United
5 States Government, or for any person acting or purporting
6 to act under his authority, to do any of the following things:

1 (a) To require or request, or to attempt to require or
2 request, any civilian employee of the United States serving
3 in the department or agency, or any person seeking employ-
4 ment in the executive branch of the United States Govern-
5 ment, to disclose his race, religion, or national origin, or
6 the race, religion, or national origin of any of his fore-
7 bears: *Provided, however,* That nothing contained in this
8 subsection shall be construed to prohibit inquiry concerning
9 the citizenship of any such employee or person if his citizen-
10 ship is a statutory condition of his obtaining or retaining his
11 employment: *Provided further,* That nothing contained in
12 this subsection shall be construed to prohibit inquiry concern-
13 ing the national origin or citizenship of any such employee or
14 person or of his forebears, when such inquiry is deemed
15 necessary or advisable to determine suitability for assignment
16 to activities or undertakings related to the national security
17 within the United States or to activities or undertakings of
18 any nature outside the United States.

19 (b) To state or intimate, or to attempt to state or inti-
20 mate, to any civilian employee of the United States serving
21 in the department or agency that any notice will be taken of
22 his attendance or lack of attendance at any assemblage, dis-
23 cussion, or lecture held or called by any officer of the execu-
24 tive branch of the United States Government, or by any per-

1 son acting or purporting to act under his authority, or by any
2 outside parties or organizations to advise, instruct, or in-
3 doctrinate any civilian employee of the United States serving
4 in the department or agency in respect to any matter or
5 subject other than the performance of official duties to which
6 he is or may be assigned in the department or agency, or
7 the development of skills, knowledge, or abilities which
8 qualify him for the performance of such duties: *Provided,*
9 *however,* That nothing contained in this subsection shall be
10 construed to prohibit taking notice of the participation of a
11 civilian employee in the activities of any professional group
12 or association.

13 (c) To require or request, or to attempt to require or
14 request, any civilian employee of the United States serving
15 in the department or agency to participate in any way in
16 any activities or undertakings unless such activities or under-
17 takings are related to the performance of official duties to
18 which he is or may be assigned in the department or agency,
19 or to the development of skills, knowledge, or abilities which
20 qualify him for the performance of such duties.

21 (d) To require or request, or to attempt to require
22 or request, any civilian employee of the United States serv-
23 ing in the department or agency to make any report con-

1 cerning any of his activities or undertakings unless such
2 activities or undertakings are related to the performance of
3 official duties to which he is or may be assigned in the
4 department or agency, or to the development of skills, knowl-
5 edge, or abilities which qualify him for the performance of
6 such duties, or unless there is reason to believe that the
7 civilian employee is engaged in outside activities or employ-
8 ment in conflict with his official duties.

9 (e) To require or request, or to attempt to require or
10 request, any civilian employee of the United States serving
11 in the department or agency, or any person applying for
12 employment as a civilian employee in the executive branch
13 of the United States Government, to submit to any interroga-
14 tion or examination or to take any psychological test which
15 is designed to elicit from him information concerning his
16 personal relationship with any person connected with him
17 by blood or marriage, or concerning his religious beliefs or
18 practices, or concerning his attitude or conduct with respect
19 to sexual matters: *Provided, however,* That nothing con-
20 tained in this subsection shall be construed to prevent
21 a physician from eliciting such information or authorizing
22 such tests in the diagnosis or treatment of any civilian
23 employee or applicant where such physician deems such
24 information necessary to enable him to determine whether
25 or not such individual is suffering from mental illness: *Pro-*

1 *vided further, however, That this determination shall be made*
2 *in individual cases and not pursuant to general practice or*
3 *regulation governing the examination of employees or appli-*
4 *cants according to grade, agency, or duties: Provided further,*
5 *however, That nothing contained in this subsection shall be*
6 *construed to prohibit an officer of the department or agency*
7 *from advising any civilian employee or applicant of a specific*
8 *charge of sexual misconduct made against that person, and*
9 *affording him an opportunity to refute the charge.*

10 (f) To require or request, or attempt to require or
11 request, any civilian employee of the United States serving
12 in the department or agency, or any person applying for
13 employment as a civilian employee in the executive branch
14 of the United States Government, to take any polygraph
15 test designed to elicit from him information concerning his
16 personal relationship with any person connected with him
17 by blood or marriage, or concerning his religious beliefs or
18 practices, or concerning his attitude or conduct with respect
19 to sexual matters.

20 (g) To require or request, or to attempt to require
21 or request, any civilian employee of the United States serving
22 in the department or agency to support by personal endeavor
23 or contribution of money or any other thing of value the
24 nomination or the election of any person or group of persons
25 to public office in the Government of the United States or of

1 any State, district, Commonwealth, territory, or possession
2 of the United States, or to attend any meeting held to pro-
3 mote or support the activities or undertakings of any political
4 party of the United States or of any State, district, Common-
5 wealth, territory, or possession of the United States.

6 (h) To coerce or attempt to coerce any civilian
7 employee of the United States serving in the department or
8 agency to invest his earnings in bonds or other obligations
9 or securities issued by the United States or any of its depart-
10 ments or agencies, or to make donations to any institution
11 or cause of any kind: *Provided, however,* That nothing con-
12 tained in this subsection shall be construed to prohibit any
13 officer of any executive department or any executive agency
14 of the United States Government, or any person acting or
15 purporting to act under his authority, from calling meetings
16 and taking any action appropriate to afford any civilian em-
17 ployee of the United States the opportunity voluntarily to
18 invest his earnings in bonds or other obligations or securities
19 issued by the United States or any of its departments or
20 agencies, or voluntarily to make donations to any institution
21 or cause.

22 (i) To require or request, or to attempt to require
23 or request, any civilian employee of the United States
24 serving in the department or agency to disclose any items
25 of his property, income, or other assets, source of income,

1 or liabilities, or his personal or domestic expenditures or
2 those of any member of his family or household: *Provided,*
3 *however,* That this subsection shall not apply to any civilian
4 employee who has authority to make any final determination
5 with respect to the tax or other liability of any person, cor-
6 poration, or other legal entity to the United States, or
7 claims which require expenditure of moneys of the United
8 States: *Provided further, however,* That nothing contained
9 in this subsection shall prohibit the Department of the
10 Treasury or any other executive department or agency of
11 the United States Government from requiring any civilian
12 employee of the United States to make such reports as may
13 be necessary or appropriate for the determination of his
14 liability for taxes, tariffs, custom duties, or other obliga-
15 tions imposed by law.

16 (j) To require or request, or to attempt to require
17 or request, any civilian employee of the United States
18 embraced within the terms of the proviso in subsection
19 (i) to disclose any items of his property, income, or
20 other assets, source of income, or liabilities, or his personal
21 or domestic expenditures or those of any member of his
22 family or household other than specific items tending to
23 indicate a conflict of interest in respect to the perform-
24 ance of any of the official duties to which he is or may be
25 assigned.

1 (k) To require or request, or to attempt to require or
2 request, any civilian employee of the United States serving
3 in the department or agency, who is under investigation for
4 misconduct, to submit to interrogation which could lead to
5 disciplinary action without the presence of counsel or other
6 person of his choice, if he so requests: *Provided, however,*
7 That a civilian employee of the United States serving in the
8 Central Intelligence Agency or the National Security Agency
9 may be accompanied only by a person of his choice who
10 serves in the agency in which the employee serves, or by
11 counsel who has been approved by the agency for access to
12 the information involved.

13 (1) To discharge, discipline, demote, deny promotion
14 to, relocate, reassign, or otherwise discriminate in regard to
15 any term or condition of employment of, any civilian em-
16 ployee of the United States serving in the department or
17 agency, or to threaten to commit any of such acts, by reason
18 of the refusal or failure of such employee to submit to or
19 comply with any requirement, request, or action made un-
20 lawful by this Act, or by reason of the exercise by such
21 civilian employee of any right granted or secured by this
22 Act.

23 SEC. 2. It shall be unlawful for any officer of the United
24 States Civil Service Commission, or for any person acting
25 or purporting to act under his authority, to do any of the

9)

1 (a) To require or request, or to attempt to require or
2 request, any executive department or any executive agency
3 of the United States Government, or any officer or employee
4 serving in such department or agency, to violate any of the
5 provisions of section 1 of this Act.

6 (b) To require or request, or to attempt to require or
7 request, any person seeking to establish civil service status
8 or eligibility for employment in the executive branch of the
9 United States Government, or any person applying for em-
10 ployment in the executive branch of the United States Gov-
11 ernment, or any civilian employee of the United States
12 serving in any department or agency of the United States
13 Government, to submit to any interrogation or examination
14 or to take any psychological test which is designed to elicit
15 from him information concerning his personal relationship
16 with any person connected with him by blood or marriage,
17 or concerning his religious beliefs or practices, or concerning
18 his attitude or conduct with respect to sexual matters: *Pro-*
19 *vided, however,* That nothing contained in this subsection
20 shall be construed to prevent a physician from eliciting such
21 information or authorizing such tests in the diagnosis or
22 treatment of any civilian employee or applicant where such
23 physician deems such information necessary to enable him
24 to determine whether or not such individual is suffering
25 from mental illness: *Provided further, however,* That this

1 determination shall be made in individual cases and not pur-
2 suant to general practice or regulation governing the exami-
3 nation of employees or applicants according to grade, agency,
4 or duties: *Provided further, however,* That nothing contained
5 in this subsection shall be construed to prohibit an officer of
6 the Civil Service Commission from advising any civilian
7 employee or applicant of a specific charge of sexual miscon-
8 duct made against that person, and affording him an oppor-
9 tunity to refute the charge.

10 (c) To require or request, or to attempt to require
11 or request, any person seeking to establish civil service
12 status or eligibility for employment in the executive branch
13 of the United States Government, or any person applying
14 for employment in the executive branch of the United States
15 Government, or any civilian employee of the United States
16 serving in any department or agency of the United States
17 Government, to take any polygraph test designed to elicit
18 from him information concerning his personal relationship
19 with any person connected with him by blood or marriage,
20 or concerning his religious beliefs or practices, or concerning
21 his attitude or conduct with respect to sexual matters.

22 SEC. 3. It shall be unlawful for any commissioned officer,
23 as defined in section 101 of title 10, United States Code, or
24 any member of the Armed Forces acting or purporting to
25 act under his authority, to require or request, or to attempt

1 to require or request, any civilian employee of the executive
2 branch of the United States Government under his authority
3 or subject to his supervision to perform any of the acts or
4 submit to any of the requirements made unlawful by section
5 1 of this Act.

6 SEC. 4. Whenever any officer of any executive depart-
7 ment or any executive agency of the United States Gov-
8 ernment, or any person acting or purporting to act under his
9 authority, or any commissioned officer as defined in section
10 101 of title 10, United States Code, or any member of the
11 Armed Forces acting or purporting to act under his author-
12 ity, violates or threatens to violate any of the provisions of
13 section 1, 2, or 3 of this Act, any civilian employee of the
14 United States serving in any department or agency of the
15 United States Government, or any person applying for
16 employment in the executive branch of the United States
17 Government, or any person seeking to establish civil service
18 status or eligibility for employment in the executive branch
19 of the United States Government, affected or aggrieved by
20 the violation or threatened violation, may bring a civil action
21 in his own behalf or in behalf of himself and others
22 similarly situated, against the offending officer or person in
23 the United States district court for the district in which the
24 violation occurs or is threatened, or the district in which the
25 offending officer or person is found, or in the United States

1 District Court for the District of Columbia, to prevent
2 the threatened violation or to obtain redress against the
3 consequences of the violation. The Attorney General shall
4 defend all officers or persons sued under this section
5 who acted pursuant to an order, regulation, or directive,
6 or who, in his opinion, did not willfully violate the
7 provisions of this Act. Such United States district court
8 shall have jurisdiction to try and determine such civil action
9 irrespective of the actuality or amount of pecuniary injury
10 done or threatened, and without regard to whether the
11 aggrieved party shall have exhausted any administrative
12 remedies that may be provided by law, and to issue such
13 restraining order, interlocutory injunction, permanent in-
14 junction, or mandatory injunction, or enter such other judg-
15 ment or decree as may be necessary or appropriate to prevent
16 the threatened violation, or to afford the plaintiff and others
17 similarly situated complete relief against the consequences of
18 the violation. With the written consent of any person
19 affected or aggrieved by a violation or threatened violation
20 of section 1, 2, or 3 of this Act, any employee organization
21 may bring such action on behalf of such person, or may
22 intervene in such action. For the purposes of this section,
23 employee organizations shall be construed to include any
24 brotherhood, council, federation, organization, union, or pro-
25 fessional association made up in whole or in part of civilian

1 employees of the United States and which has as one of its
2 purposes dealing with departments, agencies, commissions,
3 and independent agencies of the United States concerning
4 the condition and terms of employment of such employees.

5 SEC. 5. (a) There is hereby established a Board on
6 Employees' Rights (hereinafter referred to as the "Board").
7 The Board shall be composed of three members, appointed
8 by the President, by and with the advice and consent of the
9 Senate. The President shall designate one member as chair-
10 man. No more than two members of the Board may be of
11 the same political party. No member of the Board shall be
12 an officer or employee of the United States Government.

13 (b) The term of office of each member of the Board
14 shall be five years, except that (1) of those members first
15 appointed, one shall serve for five years, one for three years,
16 and one for one year, respectively, from the date of enact-
17 ment of this Act, and (2) any member appointed to fill
18 a vacancy occurring prior to the expiration of the term for
19 which his predecessor was appointed shall be appointed for
20 the remainder of such term.

21 (c) Members of the Board shall be compensated at the
22 rate of \$75 a day for each day spent in the work of the
23 Board, and shall be paid actual travel expenses and per
24 diem in lieu of subsistence expenses when away from their

1 usual places of residence, as authorized by section 5703 of
2 title 5, United States Code.

3 (d) Two members shall constitute a quorum for the
4 transaction of business.

5 (e) The Board may appoint and fix the compensation
6 of such officers, attorneys, and employees, and make such
7 expenditures, as may be necessary to carry out its functions.

8 (f) The Board shall make such rules and regulations
9 as shall be necessary and proper to carry out its functions.

10 (g) The Board shall have the authority and duty to
11 receive and investigate written complaints from or on be-
12 half of any person claiming to be affected or aggrieved by
13 any violation or threatened violation of this Act and to con-
14 duct a hearing on each such complaint. Within ten days
15 after the receipt of any such complaint, the Board shall
16 furnish notice of the time, place, and nature of the hearing
17 thereon to all interested parties. The Board shall render
18 its final decision with respect to any complaint within thirty
19 days after the conclusion of its hearing thereon.

20 (h) Officers or representatives of any Federal employee
21 organization in any degree concerned with employment of
22 the category in which any alleged violation of this Act
23 occurred or is threatened shall be given an opportunity to
24 participate in each hearing conducted under this section,
25 through submission of written data, views, or arguments,

1 and in the discretion of the Board, with opportunity for oral
2 presentation. Government employees called upon by any
3 party or by any Federal employee organization to participate
4 in any phase of any administrative or judicial proceeding
5 under this section shall be free to do so without incurring
6 travel cost or suffering loss in leave or pay; and all such em-
7 ployees shall be free from restraint, coercion, interference,
8 intimidation, or reprisal in or because of their participation.
9 Any periods of time spent by Government employees during
10 such participation shall be held and considered to be Federal
11 employment for all purposes.

12 (i) Insofar as consistent with the purposes of this sec-
13 tion, the provisions of subchapter II of chapter 5 of title 5,
14 United States Code, relating to the furnishing of notice and
15 manner of conducting agency hearings, shall be applicable
16 to hearings conducted by the Board under this section.

17 (j) If the Board shall determine after hearing that a
18 violation of this Act has not occurred or is not threatened,
19 the Board shall state its determination and notify all inter-
20 ested parties of such determination. Each such determina-
21 tion shall constitute a final decision of the Board for pur-
22 poses of judicial review.

23 (k) If the Board shall determine that any violation
24 of this Act has been committed or threatened by any civil-
25 ian officer or employee of the United States, the Board shall

1 immediately (1) issue and cause to be served on such of-
2 ficer or employee an order requiring such officer or employee
3 to cease and desist from the unlawful act or practice which
4 constitutes a violation, (2) endeavor to eliminate any such
5 unlawful act or practice by informal methods of conference,
6 conciliation, and persuasion, and (3) may—

7 (Λ) (i) in the case of the first offense by any
8 civilian officer or employee of the United States, other
9 than any officer appointed by the President, by and with
10 the advice and consent of the Senate, issue an official
11 reprimand against such officer or employee or order the
12 suspension without pay of such officer or employee from
13 the position or office held by him for a period of not to
14 exceed fifteen days, and (ii) in the case of a second
15 or subsequent offense by any such officer or employee,
16 order the suspension without pay of such officer or em-
17 ployee from the position or office held by him for a
18 period of not to exceed thirty days or order the removal
19 of such officer or employee from such position or office;
20 and

21 (B) in the case of any offense by any officer ap-
22 pointed by the President, by and with the advice and
23 consent of the Senate, transmit a report concerning such
24 violation to the President and the Congress.

25 (1) If the Board shall determine that any violation

1 of this Act has been committed or threatened by any officer
2 of any of the Armed Forces of the United States, or any
3 person purporting to act under authority conferred by such
4 officer, the Board shall (1) submit a report thereon to the
5 President, the Congress, and the Secretary of the military
6 department concerned, (2) endeavor to eliminate any un-
7 lawful act or practice which constitutes such a violation by
8 informal methods of conference, conciliation, and persuasion,
9 and (3) refer its determination and the record in the case
10 to any person authorized to convene general courts-martial
11 under section 822 (article 22) of title 10, United States
12 Code. Thereupon such person shall take immediate steps
13 to dispose of the matter under chapter 47 of title 10, United
14 States Code (Uniform Code of Military Justice).

15 (m) Any party aggrieved by any final determination
16 or order of the Board may institute, in the district court of
17 the United States for the judicial district wherein the viola-
18 tion or threatened violation of this Act occurred, or in the
19 United States District Court for the District of Columbia,
20 a civil action for the review of such determination or order.
21 In any such action, the court shall have jurisdiction to (1)
22 affirm, modify, or set aside any determination or order made
23 by the Board which is under review, or (2) require the
24 Board to make any determination or order which it is author-
25 ized to make under subsection (k), but which it has refused

1 to make. The reviewing court shall set aside any finding,
2 conclusion, determination, or order of the Board as to which
3 complaint is made which is unsupported by substantial evi-
4 dence on the record considered as a whole.

5 (n) The Board shall submit, not later than March 31
6 of each year, to the Senate and House of Representatives,
7 respectively, a report on its activities under this section dur-
8 ing the immediately preceding calendar year, including a
9 statement concerning the nature of all complaints filed with
10 it, its determinations and orders resulting from hearings
11 thereon, and the names of all officers or employees of the
12 United States with respect to whom any penalties have been
13 imposed under this section.

14 (o) There are authorized to be appropriated sums nec-
15 essary, not in excess of \$100,000, to carry out the provisions
16 of this section.

17 SEC. 6. Nothing contained in this Act shall be construed
18 to prohibit an officer of the Central Intelligence Agency or
19 of the National Security Agency from requesting any civilian
20 employee or applicant to take a polygraph test, or to take a
21 psychological test, designed to elicit from him information
22 concerning his personal relationship with any person con-
23 nected with him by blood or marriage, or concerning his
24 religious beliefs or practices, or concerning his attitude or
25 conduct with respect to sexual matters, or to provide a per-

1 sonal financial statement, if the Director of the Central
2 Intelligence Agency or his designee or the Director of the
3 National Security Agency or his designee makes a personal
4 finding with regard to each individual to be so tested or
5 examined that such test or information is required to pro-
6 tect the national security.

7 SEC. 7. No civilian employee of the United States serv-
8 ing in the Central Intelligence Agency or the National
9 Security Agency, and no individual or organization acting in
10 behalf of such employee, shall be permitted to invoke the
11 provisions of sections 4 and 5 without first submitting a writ-
12 ten complaint to the agency concerned about the threatened
13 or actual violation of this Act and affording such agency one
14 hundred and twenty days from the date of such complaint to
15 prevent the threatened violation or to redress the actual vio-
16 lation: *Provided, however,* That nothing in this Act shall be
17 construed to affect any existing authority of the Director of
18 Central Intelligence under section 403 (c) , of title 50, United
19 States Code, and any authorities available to the National
20 Security Agency under section 833 of title 50, United States
21 Code, to terminate the employment of any employee.

22 SEC. 8. Nothing in this Act shall be construed to affect
23 in any way the authority of the Directors of the Central
24 Intelligence Agency or the National Security Agency to pro-
25 tect or withhold information pursuant to statute or executive

1 order. The personal certification by the Director of the agency
2 that disclosure of any information is inconsistent with the
3 provision of any statute or executive order shall be conclu-
4 sive and no such information shall be admissable in evidence
5 in any interrogation under section 1(k) or in any civil
6 action under section 4 or in any proceeding or civil action
7 under section 5.

8 SEC. 9. This Act shall not be applicable to the Federal
9 Bureau of Investigation.

10 SEC. 10. Nothing contained in sections 4 and 5 shall
11 be construed to prevent establishment of department and
12 agency grievance procedures to enforce this Act, but the
13 existence of such procedures shall not preclude any applicant
14 or employee from pursuing the remedies established by this
15 Act or any other remedies provided by law: *Provided,*
16 *however,* That if under the procedures established, the em-
17 ployee or applicant has obtained complete protection against
18 threatened violations or complete redress for violations, such
19 action may be pleaded in bar in the United States district
20 court or in proceedings before the Board on Employee
21 Rights: *And provided further,* That if an employee elects
22 to seek a remedy under either section 4 or section 5, he
23 waives his right to proceed by an independent action under
24 the remaining section.

21

1 SEC. 11. If any provision of this Act or the application
2 of any provision to any person or circumstance shall be held
3 invalid, the remainder of this Act or the application of such
4 provision to persons or circumstances other than those as to
5 which it is held invalid, shall not be affected.

Passed the Senate May 19, 1970.

Attest: FRANCIS R. VALEO,
Secretary.

91ST CONGRESS
2^D SESSION

S. 782

AN ACT

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

MAY 20, 1970

Referred to the Committee on Post Office and Civil Service